KPMG

# Technical Update

February 2023

## Amendment on the Implementation of VAT on E-commerce

*(Instruction No. 2520 GDT, dated 24 January 2023)*

Effective 60 days after the date of signature, this General Department of Taxation (GDT) instruction will replace Instruction no. 20522.GDT dated 8 December 2021 on the Implementation of the Value Added Tax on E-commerce Transactions. This new GDT instruction was issued to further clarify and add some rules and procedures for the implementation of VAT on E-commerce.

Below are the salient changes of the VAT on E-commerce regulations under this new Instruction.

- The non-resident taxpayer who only has transactions with its related party (e.g., subsidiary or branch) in Cambodia are exempted from Simplified VAT Registration, but its related party in Cambodia shall notify the GDT.
- For B2B transactions, the self-assessment taxpayers who have already filed the monthly tax declaration can amend the VAT amount by using Credit Note issued by the non-resident taxpayers. However, VAT credits resulting from this amendment are only deductible against VAT reverse charge.

There are no other changes to the rules/guidance provided under the previous Instruction no. 20522.

### Our comments

This exemption on the Simplified VAT Registration for related party transactions will help reduce some burden on the part of the non-resident taxpayers in terms of complying with their monthly E-VAT declaration obligations; however, the local resident related party must still comply with its VAT “reverse charge” declaration obligation. Furthermore, as there is a need for the latter to notify the GDT of such transaction, both parties must ensure that any related party transaction adheres to the “arms-length” principle to manage any potential TP adjustment risk.

Notably, the above added rules were already mentioned on some of the public discussions and FAQs facilitated by the GDT during the launching of this new VAT on E-commerce transaction. As it is, we suggest all taxpayers to remain vigilant for any updates on this matter, as these could provide practical implications on the implementation of the VAT on E-commerce, and the potential chance that those updates will eventually be added in the official instructions/guidance to be issued by the GDT in the future.

Lastly, this new instruction could be effective from 24 March 2023 onwards (i.e., 60 days from date of issuance) as there is no clear signing date indicated on this new Instruction.

## Updated Procedures for Temporary Suspension or Resumption of Business Activities, and Measures on Suspension of VAT Certificate

*(Instruction No. 560 GDT, dated 9 January 2023)*

The main purpose of this GDT instruction is to provide guidelines on how to apply for temporary suspension or resumption of business activities and to provide clearer measures on the suspension of VAT certificate.

### I. Procedures for Suspension or Resumption of Business Activities

| Description | Remarks |
|---|---|
| **Application process** | The below two options are available for taxpayers:<br>1. Complete and submit the application form via the GDT's online system; or<br>2. Complete and submit the application form at the tax administration's office or email address |
| **Response to requests** | Taxpayers shall receive the response letter within 7 working days |
| **Prohibited activities** | During temporary suspension, taxpayers are not allowed to:<br>• issue any tax invoices<br>• request for VAT refund or utilize VAT credit<br>• conduct any export, import, or other business activities.<br>If the taxpayer needs to issue a tax invoice or request for VAT credit, the taxpayer shall submit a request letter to the GDT. |
| **Tax compliance requirement** | During temporary suspension, taxpayers must still declare its monthly and annual tax obligations, as well as pay applicable taxes (if any) in accordance with the laws and regulations in effect. |
| **Penalty** | Non-compliance with the monthly and annual tax declaration obligation will result in:<br>• 10% additional tax and 1.5% interest per month of the tax payable<br>• Administrative penalty of 2 million riels (i.e., approx. US$500 per month |

### II. Measures on VAT Certificate Suspension

| Description | Remarks |
|---|---|
| **Impacted taxpayers** | • Enterprises that have declared Nil and declared no business activities (i.e., no turnover from principal business activity or non-taxable supply) with no approval for temporary suspension of business activities for 3 consecutive months<br>• Enterprises that do not file monthly tax returns within 3 consecutive calendar months |

| Description | Remarks |
|---|---|
| **Potential actions to be taken by the GDT** | • Suspend the VAT Certificate;<br>• Suspend Stamp Duty on the transfer of ownership of both movable and immovable properties;<br>• Request the Ministry of Commerce to suspend the approval request for share transfer or any other requests;<br>• Request the General Department of Customs and Excise to cease the import-export activities of the enterprises;<br>• Request the National Bank of Cambodia to freeze the enterprise's bank account and suspend the opening of bank account at any banks;<br>• Request the Ministry of Land Management, Urban Planning and Construction to invalidate any request to transfer immovable properties of the enterprise;<br>• Request relevant ministries and authorities to suspend or reject the approval of all requests and any licenses of the enterprises. |
| **Prohibited activities** | During temporary suspension, taxpayers are not allowed to:<br>• issue any tax invoices<br>• request for VAT refund or utilize VAT credit<br>• conduct any export, import, or other business activities. |
| **Reactivation of the VAT Certificate** | Taxpayers can request for the reactivation of the suspended VAT certificate once they have fulfilled their tax obligations in accordance with the laws and regulations in effect |
| **Penalty** | Non-compliance with the monthly and annual tax declaration obligation will result in:<br>• 10% additional tax and 1.5% interest per month of the tax payable<br>• Administrative penalty of 2 million riels (i.e., approx. US$500 per month |

## Our comments

The above instruction would be beneficial for taxpayers who have dormant operations in Cambodia due to economic conditions or other business reasons. It must be noted that during the temporary suspension, the taxpayers are still required to submit their monthly and annual tax declaration with the GDT which could be an administrative burden for them. However, such declaration of temporary business suspension could potentially support the taxpayer's case if the GDT would try to deem any income during the dormancy period or challenge the actual results of the taxpayer's operations during these periods.

Meanwhile, taxpayers must also ensure the timely submission of monthly and/or annual tax declaration to mitigate the risk of the GDT suspending its VAT certificate and disrupting the Company's normal operations. However, it is unclear if the GDT will also automatically suspend the VAT certificate of taxpayers that report a nil turnover for 3 consecutive months, even if such circumstance is brought about by a standard billing practice for the taxpayer's sector (e.g., for milestone billing for construction contracts or projects). This matter should be clarified further by the GDT.

As a committed tax advisor to our clients, we welcome any opportunities to discuss the relevance of the above matters to your business.

# Contact us


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